

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 2023-20555-CIV-DAMIAN/VALLE

NORIS AREVALO, JUAN AREVALO
VILLALOBOS, TOMAS AVENDANO,
SANDRA BAIRES, and all others similarly
situated under 29 U.S.C. 216(b),

Plaintiffs,

vs.

HAVANA HARRY'S II INC., NIEVES FEAL
and ARTHUR CULLEN,

Defendants.

**DEFENDANTS' MOTION FOR ENTRY OF JUDGMENT AS TO
SHAVING CLAIMS IN COUNT I OF AMENDED COMPLAINT [DE 66]**

Defendants, HAVANA HARRY'S II INC., NIEVES FEAL, and ARTHUR CULLEN, by and through undersigned counsel, pursuant to the Federal Rules of Civil Procedure and Southern District of Florida Local Rule 7.1, hereby file this Motion for Entry of Judgment as to Shaving Claims in Count I of Amended Complaint and state:

1. This matter has spiraled out of control.
2. Undersigned counsel was recently retained by Defendants.
3. It is time to narrow the disputes between the parties.
4. This is a Fair Labor Standards Act (FLSA) matter brought as a collective action.
5. Plaintiffs seek to recover for alleged unpaid overtime wages (Count I) and alleged improper payroll deductions (Count II).

6. Following the undersigned's appearance in this matter, the undersigned sought a breakdown of the most recent damages sought by Plaintiffs. A breakdown was provided by Plaintiffs' counsel.

7. Defendants have elected to take a judgment as to Count I of the Amended Complaint filed by Plaintiffs on September 4, 2023 concerning Plaintiffs' allegations that Defendants were "shaving" hours worked (the "Shaving Claims"). [DE 66]. The stipulated judgment as to the Shaving Claims in Count I includes liquidated damages pursuant to 29 U.S.C. § 216(b).

8. The full liquidated amount for the Shaving Claims as to each Plaintiff is as follows:

- a. Noris Arevalo: \$34,281.00
- b. Juan Villalobos Arevalo: \$32,976.00
- c. Tomas Avendano: \$27,432.00
- d. Sandra Baires: \$28,350.00
- e. Saul Bonilla: \$17,786.26
- f. Maria Pinzon: \$5,346.00
- g. Jessenia Flores: \$17,640.00

9. The total judgment to be entered against Defendants as to Count I of the Amended Complaint is \$163,811.26, apportioned as noted above.

10. This judgment is exclusive of attorney's fees and costs, which Defendants agree shall be determined by this Court and in accordance with S.D. Fla. L.R. 7.3. Defendants do not contest entitlement to fees and costs as to the Shaving Claims only.

11. Defendants' stipulation to judgment as to the Shaving Claims disposes of Count I entirely as Count I is comprised of only the "shave hours" allegations. There is no "improper deductions" theory asserted in Count I. *See* [DE 66].

12. On February 8, 2024, this Court noted as follows: "[T]o the extent Plaintiffs seek to amend the First Amended Complaint, the request is denied." *See* [DE 180].

13. Defendants are not stipulating to a judgment as to Count II of the Amended Complaint or any portion of Plaintiffs' claims relating to their "improper deductions" theory. This Motion has no bearing on Count II of the First Amended Complaint. Nothing in this Motion shall be construed as an admission of liability by Defendants with respect to Count II.

14. Undersigned counsel has conferred with counsel for Plaintiffs on the relief sought in this Motion pursuant to S.D. Fla. L.R. 7.1(c). Plaintiffs' counsel's position is as follows:

"Plaintiffs do not oppose a judgment being entered for \$163,811.26 against the Defendants jointly and severally. The Plaintiffs do oppose the language extinguishing Count I of the Amended Complaint after judgment has been entered based on DE170 and DE180. Specifically, Plaintiffs served updated Rule 26 disclosures incorporating their wrongful deduction claims into their Count I overtime claims which remain unaffected after judgment is entered against the Defendants. Additionally, Plaintiffs take issue with the Defendants' agreement to Plaintiffs' entitlement to attorney's fees and costs as to the "shaved overtime hour claims only" as being contrary to binding law in this Circuit. Plaintiffs believe that a *20 minute telephonic status conference* on this matter would be helpful in resolving the Defendants' Motion for Entry Of Judgment."

WHEREFORE, Defendants, HAVANA HARRY'S II INC., NIEVES FEAL, and ARTHUR CULLEN, respectfully request that this Court grant this Motion for Entry of Judgment as to Shaving Claims in Count I of Amended Complaint, and enter any other relief deemed appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2024, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court using CM/ECF and that the foregoing documents being served this day on all counsel or parties of record via transmission of a Notice of Electronic Filing generated by CM/ECF.

By: **/s/ Jorge Freddy Perera**

J. Freddy Perera, Esq.

Florida Bar No. 93625

freddy@pba-law.com

Alexandra Hayes, Esq.

Florida Bar No. 109482

alex@pba-law.com

PERERA LAW GROUP

2030 S Douglas Road, Suite 203

Coral Gables, Florida 33134

Telephone: 786-485-5232